

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

DONNA HOFFMAN,
Plaintiff,

vs.

LARRY G. MASSANARI, Acting
Commissioner of Social Security,
Defendant.

No. C 00-4052-MWB

**MEMORANDUM OPINION AND
ORDER REGARDING DEFENDANT'S
MOTION TO ALTER JUDGMENT**

This matter comes before the court pursuant to defendant Commissioner's June 14, 2001, motion to alter or amend the order and judgment entered on June 5, 2001, which reversed the Commissioner's decision and remanded this action pursuant to "sentence four" of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g). The Commissioner contends that the portion of the June 5, 2001, order requiring the payment of interim SSI benefits to plaintiff Hoffman *after* February 2001 is in error and should be deleted. Plaintiff Hoffman resisted the motion to alter or amend the order and judgment on June 29, 2001.

I. BACKGROUND

In this action, plaintiff Donna Hoffman sought judicial review of the Commissioner's denial of her September 2, 1995, application for supplemental security income (SSI) benefits under Title XVI of the Social Security Act and her October 2, 1995, application for widow's disability insurance (DI) benefits under Title II of the Social Security Act. An administrative law judge (ALJ) denied Hoffman's applications on March 28, 1997. Hoffman appealed the ALJ's decision to the Appeals Council on May 1, 1997. The Appeals Council did not issue its written decision affirming the denial of benefits in Hoffman's case

until nearly three years later on March 16, 2000. Hoffman promptly filed the present action for judicial review on May 15, 2000.

On October 2, 2000, instead of answering the complaint after extensions of time to do so, the Commissioner moved to remand this action pursuant to “sentence six” of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), because the Commissioner represented that the claim file in this case could not be located. By order dated October 19, 2000, this court remanded this action to the Commissioner of Social Security pursuant to “sentence six” for further administrative action. However, in a motion to amend the remand order, filed October 27, 2000, Hoffman requested an award of interim benefits during the remand. In response to Hoffman’s motion, the court stayed the remand of this action on October 30, 2000, until the parties could brief the question of whether or not interim benefits could or should be awarded in the circumstances of this case. By order dated November 27, 2000, the court lifted its stay, remanded this action to the Commissioner of Social Security for further administrative action pursuant to “sentence six” of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), and ordered that, “[p]ending final determination by the Commissioner, the Commissioner shall pay interim benefits to Hoffman from the date of the court’s original remand order, October 19, 2000, in the amount Hoffman would have received for SSI benefits had she been successful on her initial application, subject to recoupment pursuant to 42 U.S.C. § 404 if it is ultimately determined that the benefits paid were not due.” *Hoffman v. Apfel*, 122 F. Supp. 2d 1001, 1017 (N.D. Iowa 2000).

However, no further determination of Hoffman’s claims for benefits was made by the Social Security Administration upon remand. Instead, the Social Security Administration found the original claim file on Hoffman’s applications for benefits and filed an answer to Hoffman’s complaint for judicial review in this action on February 8, 2001. Also, apparently at about the same time, the Social Security Administration terminated

payment of interim benefits to Hoffman.

Upon the filing of the Commissioner's answer in this action, the Clerk of Court established a briefing schedule for submission of the action on the merits. Hoffman filed her brief on the merits on March 12, 2001. However, instead of briefing the merits of Hoffman's action for judicial review, on April 25, 2001, the Commissioner moved the court to reverse the decision of the ALJ, that is, the ALJ's original March 28, 1997, decision, and to remand this action pursuant to "sentence four" of section 205(g), 42 U.S.C. § 405(g), on the ground that, at the request of agency counsel, the Appeals Council of the Social Security Administration had determined that remand was appropriate for further consideration of Hoffman's claims for benefits. Hoffman resisted another remand, on the ground that the agency had been afforded ample opportunities to make a correct determination, but had not done so, and therefore the court should simply award benefits now.

By order dated June 5, 2001, the court determined that a remand was appropriate to give the agency the opportunity to correct errors in its own administrative disposition of Hoffman's claims. The court also noted that, because the court had ordered the Commissioner to pay interim benefits to Hoffman, Hoffman would not suffer further hardship during another remand to the administrative process. Therefore, the court reversed the Commissioner's decision and remanded this case pursuant to "sentence four" of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g). It is the portion of this order regarding continued payment of interim benefits that the Commissioner contends should be altered—indeed, deleted.

II. LEGAL ANALYSIS

A. Standards For A Rule 59(e) Motion To Alter Or Amend

Rule 59(e) of the Federal Rules of Civil Procedure provides as follows:

(e) Motion to Alter or Amend Judgment. Any motion

to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

FED. R. CIV. P. 59(e). Thus, the rule provides only a deadline for motions to alter or amend, without specifying the standards for alteration or amendment.³¹ The Eighth Circuit Court of Appeals, however, has clarified that, under Rule 59(e), the court may alter or amend its judgment only if it finds a “manifest” error of law or fact in its ruling. See *Hagerman v. Yukon Energy Corp.*, 839 F.2d 407, 414 (8th Cir.) (quoting *Rothwell Cotton Co. v. Rosenthal & Co.*, 827 F.2d 246, 251 (7th Cir.), *as amended*, 835 F.2d 710 (7th Cir. 1987), quoting in turn *Keene Corp. v. International Fidelity Ins. Co.*, 561 F. Supp. 656, 665-66 (N.D. Ill. 1983), *aff’d*, 736 F.2d 388 (7th Cir. 1984)), *cert. denied*, 488 U.S. 820 (1988). More specifically,

Federal Rule of Civil Procedure 59(e) was adopted to clarify a district court’s power to correct its own mistakes in the time period immediately following entry of judgment. *Norman [v. Arkansas Dep’t of Educ.]*, 79 F.3d [748,] 750 [(8th Cir. 1996)] (citing *White v. New Hampshire Dep’t of Employment Sec.*, 455 U.S. 445, 102 S. Ct. 1162, 71 L. Ed. 2d 325 (1982)). Rule 59(e) motions serve a limited function of correcting “‘manifest errors of law or fact or to present newly discovered evidence.’” *Hagerman*, 839 F.2d at 414 (quoting *Rothwell Cotton Co. v. Rosenthal & Co.*, 827 F.2d 246, 251 (7th Cir.), *as amended*,

¹ A party’s failure to file a timely Rule 59(e) motion eliminates that rule as the basis for the district court’s action. See *Spangle v. Ming Tah Elec. Co.*, 866 F.2d 1002, 1003 (8th Cir. 1989); *Sanders v. Clemco Indus.*, 862 F.2d 161, 168 (8th Cir. 1988); *Townsend v. Terminal Packaging Co.*, 853 F.2d 623, 624 (8th Cir. 1988). Indeed, more recently, the Eighth Circuit Court of Appeals has explained that the district court lacks subject matter jurisdiction to consider an untimely Rule 59(e) motion. See *Arnold v. Wood*, 238 F.3d 992, 998 (8th Cir. 2001); *Garrett v. United States*, 195 F.3d 1032, 1033 (8th Cir. 1999). “[T]he ten-day filing period prescribed in Rule 59(e) runs from the entry of judgment, rather than its service upon the parties.” *Arnold*, 238 F.3d at 995 n.2 (citing *FHC Equities, L.L.C. v. MBL Life Assurance Corp.*, 188 F.3d 678, 681-82 (6th Cir. 1999) (collecting cases)). However, the Commissioner’s Rule 59(e) motion in this case was timely.

835 F.2d 710 (7th Cir. 1987)). Such motions cannot be used to introduce new evidence, tender new legal theories, or raise arguments which could have been offered or raised prior to entry of judgment. *Id.*

Innovative Home Health Care, Inc. v. P.T.-O.T. Assocs. of the Black Hills, 141 F.3d 1284, 1286 (8th Cir. 1998). Denial of a Rule 59(e) motion is reviewed for abuse of discretion and the district court abuses its discretion, for example, when it makes an error of law or an erroneous factual finding. *See Computrol, Inc. v. Newtrend, L.P.*, 203 F.3d 1064, 1070 (8th Cir. 2000); *Roark v. City of Hazen, Ark.*, 189 F.3d 758, 761 (8th Cir. 1999). However, it is not an abuse of discretion for the court to deny a Rule 59(e) motion premised on “new” evidence that could have been introduced during the pendency of the action. *See U.S. West Fin. Servs., Inc. v. Buhler, Inc.*, 150 F.3d 929, 935 (8th Cir. 1998) (citing *Global Network Techs., Inc. v. Regional Airport Auth.*, 122 F.3d 661, 665-66 (8th Cir. 1997)).

B. “Manifest” Error Regarding Interim Benefits

1. Arguments of the parties

The Commissioner contends that he interpreted the court’s November 27, 2000, order to require payment of interim benefits only during the “sentence six” remand, which is the period for which Hoffman had requested interim benefits in her motion. Therefore, Hoffman was paid interim benefits for the months of October 2000 through February 2001 while her case was undergoing administrative proceedings pursuant to the court’s “sentence six” remand. The Commissioner contends that the court’s June 5, 2001, order reversing the ALJ’s decision and remanding the action to the Social Security Administration pursuant to “sentence four” indicates that the court apparently intended the payment of interim benefits to continue following the February 8, 2001, termination of the original “sentence six” remand proceedings to locate the claims folder—*i.e.*, after the Commissioner filed his answer and certified transcript—and for the duration of the period the case remained back

before the court. The Commissioner contends further that the present order for remand would apparently continue the interim benefits after final judgment and through the “sentence four” remand proceedings. The Commissioner contends, however, that such an award of interim benefits is in error, because the delay expected to locate Hoffman’s claim file ceased to exist on February 8, 2001, and furthermore, Hoffman did not seek such extraordinary relief. Therefore, the Commissioner contends that the court must modify its order to conform to the plain language of Hoffman’s October 27, 2000, request for interim benefits, which, in the Commissioner’s view, contemplated payments only during the “sentence six” remand proceedings. The Commissioner contends further that the present “sentence four” remand does not create the “unreasonable” delays in the administrative process that prompted the court to award interim benefits as equitable relief despite the absence of any statutory authority to pay SSI benefits. The Commissioner also renews his previous arguments that the payment of interim SSI benefits is wholly inappropriate under any legal theory. The Commissioner therefore asks that the court reconsider and alter its order and judgment in light of changed circumstances under the “sentence four” remand.

Not surprisingly, Hoffman disagrees. Hoffman contends that the reasons for awarding interim benefits remain the same under the “sentence four” remand as when payment of such benefits was originally ordered: The Social Security Administration’s admitted errors in the treatment of Hoffman’s claims has resulted in unnecessary delays and those same errors are now the basis for the Commissioner’s request for a “sentence four” remand. Hoffman argues that her application for benefits has languished in the administrative process for nearly six years already, so that the court was correct to order the payment of interim benefits while the Social Security Administration attempted to locate her lost claim file and was also correct to order interim benefits while the Social Security Administration corrects its errors. She also contends that she has suffered substantial prejudice already—for example, in her inability to afford appropriate health care as

needed—from the undue delay in payment of benefits that cannot be fully compensated by a lump sum payment of back benefits that otherwise would have been paid over the last several years.

2. “Manifest error” here

The court finds that the “manifest” error here was not the court’s assumption that the Social Security Administration was still paying interim benefits and would continue to do so until the Commissioner made a “final determination” of Hoffman’s claim for benefits, but the Commissioner’s assumption that the Social Security Administration could terminate payment of interim benefits when the agency found the original claim file and the Commissioner answered Hoffman’s complaint for judicial review. *See Innovative Home Health Care, Inc.*, 141 F.3d at 1286 (relief on a Rule 59(e) motion is available where the court finds a “manifest” error of law or fact in the challenged ruling); *Hagerman*, 839 F.2d at 414 (same). The order to pay interim benefits stated, “*Pending final determination by the Commissioner, the Commissioner shall pay interim benefits to Hoffman. . . .*” *Hoffman*, 122 F. Supp. 2d at 1017 (emphasis added). However, the Commissioner made no “final determination” before terminating Hoffman’s interim benefits, nor were there any other administrative proceedings of any kind on the merits of Hoffman’s claim for disability benefits; rather, the Commissioner simply found the original claim file and answered Hoffman’s complaint for judicial review on the basis of *administrative decisions already made*, that is, on the basis of the ALJ’s March 28, 1997, decision and the March 16, 2000, written decision of the Appeals Council affirming the ALJ’s denial of benefits. It should also be remembered that, at the time the court awarded interim benefits, the court was already aware that the Commissioner had represented to the court that the claim file in this case, including a cassette tape of the administrative hearing, had been located, and the tape had been sent to a contractor to be transcribed, which the court understood to be information offered in support of the Commissioner’s contention that a prompt disposition of the action

upon remand was likely, such that an award of interim benefits was unnecessary. See *Hoffman*, 122 F. Supp. 2d at 1004 & 1016. Thus, the court clearly contemplated more than the finding of the administrative file and the answering of the complaint for judicial review as the “final determination of the Commissioner” that would terminate the obligation to pay interim benefits. Therefore, the condition triggering termination of interim benefits was manifestly absent at the time the Commissioner ceased paying Hoffman interim benefits.

Indeed, the Commissioner concedes that he had to “interpret” the court’s November 27, 2000, order to arrive at the conclusion that payment of interim benefits to Hoffman should cease with the Commissioner’s finding of the administrative claim file and the filing of the Commissioner’s answer to Hoffman’s complaint for judicial review. However, interpretation of the court’s order was not the province of the Commissioner, but the province of the court. Moreover, if the Commissioner considered that finding the claim file constituted a sufficient change of circumstances, either because the rediscovered claim file constituted “newly discovered evidence” making continuation of the “sentence six” remand and payment of interim benefits unnecessary or that finding the claim file “voided” or “satisfied, released, or discharged” the Commissioner’s obligations under the “sentence six” remand order, the Commissioner should have filed a motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure seeking relief from the order to pay interim benefits. This the Commissioner manifestly did not do.

Furthermore, it gains the Commissioner nothing to argue that the plain meaning of Hoffman’s original request for interim benefits was that such benefits should end when the “sentence six” remand ended. Even assuming that the Commissioner’s reading of Hoffman’s motion is correct, the court was not constrained to grant interim benefits only to the extent they were requested. Rather, the court’s authority to grant interim benefits, as the court explained in some detail in its ruling granting such benefits in this case, stems

from the court's *equitable* power to avoid imposing hardships upon the applicant arising from an improper, or improperly delayed, disability determination. *See Hoffman*, 122 F. Supp. 2d at 1013-14 (admitting that there was no *statutory* authority for the court to award interim benefits, and instead relying on the court's *equitable* power). The court was therefore free to craft the appropriate remedy, and did so by granting interim benefits "[p]ending final determination by the Commissioner." This conclusion also answers the Commissioner's contention that the court was wholly without legal authority to grant interim benefits in the first place, a contention that the court has obviously already rejected and now finds no reason to embrace.

Nor is the court persuaded by the Commissioner's argument that the reasons for the award of interim benefits have now been eliminated, because the delay expected to locate Hoffman's claim file ceased to exist on February 8, 2001. As the court made clear in its ruling awarding interim benefits, it was not simply the likelihood that *further* delays would occur as a result of remand to allow the Commissioner to conduct "further proceedings," which might include rediscovery of the file or a renewed round of fact-finding to cure the deficiencies in the administrative record caused by loss of the file, it was also the fact that there had *already* been an excessive and unreasonable delay of nearly three years between Hoffman's appeal of the ALJ's decision to the Appeals Council and the Appeals Council's eventual decision affirming the denial of benefits in Hoffman's case. *See Hoffman*, 122 F. Supp. 2d at 1015-16. It was "the cumulative consequences of the undue delay before the Appeals Council issued its decision in this case and the further delay arising from the loss of materials necessary for judicial review" that the court determined "should not be borne by the claimant." *Id.* at 1016. In addition to delay, the court's decision to award interim benefits was based on the prejudice to Hoffman arising from extended delay of an award of benefits and her likelihood of success on remand, and the lack of any countervailing prejudice to the Commissioner in light of the statutory right to recoupment of interim

benefits paid, if such benefits were ultimately found not to be due. *See id.* As Hoffman now argues, all of these conditions still exist, notwithstanding the Commissioner's rediscovery of the claim file and request for remand pursuant to "sentence four" of 42 U.S.C. § 405(g) upon reversal of the Commissioner's denial of benefits.

Nor does the fact that a "sentence four" remand, unlike the prior "sentence six" remand, is a "final judgment," *see, e.g., Hanson v. Chater*, 895 F. Supp. 1279, 1282-88 (N.D. Iowa 1995) (distinguishing between "sentence six" and "sentence four" remands), mean that it would be in excess of the court's authority to make an award of interim benefits until the Commissioner makes a "final determination" of Hoffman's claim for benefits. Rather, the court's equitable power, upon which an award of interim benefits is based, remains viable in the circumstances now presented. *See, e.g., Califano v. Yamasaki*, 442 U.S. 682, 705 (1979) (absent a clear statutory command in the Social Security Act, federal courts retain their general equitable power over suits within their jurisdiction, and thus could enjoin recoupment actions under the Social Security Act).

III. CONCLUSION

The court finds no "manifest error" of law or fact in that part of its June 5, 2001, ruling indicating that the Commissioner must pay Hoffman interim benefits *after* February 5, 2001, until "final determination by the Commissioner" of Hoffman's claim for benefits. Therefore, the Commissioner's June 14, 2001, motion to reconsider is **denied**.

IT IS SO ORDERED.

DATED this 18th day of July, 2001.

Mark W. Bennett

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA